

Plaintiffs' Exhibit 87

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
: Plaintiffs :
: :
v. : No. 1:23-cv-00108
: :
GOOGLE, LLC, :
: :
Defendants. :
:

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

Job No. CS6043164

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| 1 | follows: * * * | 1 healthcare programs. When we need people, 2 citizens of America to take an action, it is my 3 job to do outreach to help them know what actions 4 they need to take. I could probably go on for 5 the rest of the day with details on that. |
| 3 | EXAMINATION | 6 Q. I'm sure we'll get to it. How long have 7 you been the director -- is the strategic 8 marketing -- strike that. |
| 4 | BY MS. GOODMAN: | 9 Is the Strategic Marketing Group abbreviated SMG? |
| 5 | Q. Good morning, Mr. Koepke. | 10 A. Yes, it is. |
| 6 | A. Good morning. | 11 Q. Okay. How long have you been director of SMG? |
| 7 | Q. Have you been deposed before? | 12 A. Approximately nine to ten years. |
| 8 | A. I think once. I'm not exactly sure it 9 was a formal deposition, -- | 13 Q. And prior to serving as director of SMG, 14 what -- what job did you have, if any? |
| 10 | Q. Okay. | 15 A. I was the deputy director of the 16 Creative Services Group in the Office of 17 Communications at the Centers for Medicare and 18 Medicaid Services. |
| 11 | A. -- but yes. | 19 Q. And how long were you the deputy 20 director of the Creative Services Group? |
| 12 | Q. Was there a court reporter taking down 13 everything you were saying? | 21 A. I would say three to four years. |
| 14 | A. No, there was not. | 22 Q. In your role as director of SMG, who do 23 you report to? |
| 15 | Q. Okay. So in this deposition, 16 it's important that you allow me to finish my 17 question before you answer, because our court 18 reporter, Mr. Black, is taking down everything 19 we're saying -- | 24 |
| 20 | A. All right. | 25 |
| 21 | Q. -- and he can't take two people talking 22 at the same time. Okay? | 1 A. Okay. |
| 23 | A. All right. | 2 Q. Okay. And the court reporter also 3 cannot record nonverbal answers or half verbal 4 answers, like uh-huh or huh-uh, so please make 5 sure to speak in a -- answer the questions 6 verbally. Okay? |
| 7 | A. Okay. | 3 Q. And what is that individual's name? |
| 8 | Q. Okay. And I will assume that you 9 understand my questions unless you ask me for a 10 clarification. Okay? | 4 A. Mary Wallace. |
| 11 | A. Okay. | 5 Q. How long has Mary Wallace been the 6 person to whom you've -- who you report? |
| 12 | Q. And is there any reason you're unable to 13 provide your truthful and accurate testimony here 14 today? | 7 A. Nine to ten years. |
| 15 | A. No. | 8 Q. And to whom does Ms. Wallace report? |
| 16 | Q. Okay. What is your current title? | 9 MS. CLEMONS: Objection; foundation. |
| 17 | A. Director of the Strategic Marketing 18 Group in the Office of Communications at the 19 Centers for Medicare and Medicaid Services. | 10 THE WITNESS: Many people, but the 11 administrator of CMS. |
| 20 | Q. And what are your responsibilities as 21 the director of the Strategic Marketing Group at 22 the Office of Communications at the Centers for 23 Medicare and Medicaid Services? | 12 BY MS. GOODMAN: |
| 24 | A. When -- this federal agency is 25 responsible for Medicare, Medicaid and other | 13 Q. And who is the current administrator of 14 CMS? |
| | | 15 A. Chiquita Brooks-LaSure. |
| | | 16 Q. And how long has Ms. LaSure been the 17 administrator at CMS? |
| | | 18 MS. CLEMONS: Objection; foundation. |
| | | 19 THE WITNESS: I don't know when she was 20 confirmed. |
| | | 21 BY MS. GOODMAN: |
| | | 22 Q. Okay. How many administrators of CMS 23 have you worked under over the course of your 24 time as director of SMG? |
| | | 25 A. I could give you an approximate number. |

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|----|---|----|---|
| 1 | keep going. | 1 | used? |
| 2 | MS. CLEMONS: Okay. | 2 | MS. CLEMONS: Objection to form. |
| 3 | BY MS. GOODMAN: | 3 | THE WITNESS: Yes. |
| 4 | Q. Thank you. I appreciate it. And then | 4 | BY MS. GOODMAN: |
| 5 | we can take a break. | 5 | Q. And why has CMS used MNI relative to any |
| 6 | GumGum. Have you heard of GumGum? | 6 | other programmatic provider? |
| 7 | A. Yes. | 7 | MS. CLEMONS: Objection; form. |
| 8 | Q. Is that a programmatic provider CMS has | 8 | THE WITNESS: We invest in multiple |
| 9 | used. | 9 | programmatic providers so we can track their |
| 10 | MS. CLEMONS: Objection to form. | 10 | return on investment so we can see what is most |
| 11 | THE WITNESS: We usually use GumGum, | 11 | efficient at achieving our goals. |
| 12 | yes. | 12 | BY MS. GOODMAN: |
| 13 | BY MS. GOODMAN: | 13 | Q. Okay. And then can you think of any |
| 14 | Q. And how do you -- why does CMS use | 14 | Google programmatic services that CMS has used? |
| 15 | GumGum relative to any other programmatic | 15 | MS. CLEMONS: Objection; form. |
| 16 | provider? | 16 | THE WITNESS: Yes. |
| 17 | MS. CLEMONS: Objection; form. | 17 | BY MS. GOODMAN: |
| 18 | THE WITNESS: We invest in multiple | 18 | Q. Which ones? |
| 19 | programmatic providers so we can track their ROI, | 19 | A. Google Display Network and DV360. |
| 20 | their return on investment, to be as efficient as | 20 | Q. And relative to any other programmatic |
| 21 | possible. | 21 | provider, why does CMS use Google Display Network |
| 22 | BY MS. GOODMAN: | 22 | or DV360? |
| 23 | Q. And what about Adsmovil? Have you heard | 23 | MS. CLEMONS: Objection; form. |
| 24 | of Adsmovil? | 24 | THE WITNESS: We use them to compare to |
| 25 | A. Yes. | 25 | the other programmatic providers, to track their |
| | Page 71 | | Page 73 |
| 1 | Q. Is that a programmatic provider that CMS | 1 | return on investment, to be as efficient with the |
| 2 | has used. | 2 | taxpayer dollars as we can. |
| 3 | MS. CLEMONS: Objection; form. | 3 | BY MS. GOODMAN: |
| 4 | THE WITNESS: Yes. | 4 | Q. Okay. |
| 5 | BY MS. GOODMAN: | 5 | A. Generally, they have the best reach. |
| 6 | Q. Why do you use Adsmovil relative to any | 6 | MS. GOODMAN: Okay. We can take a |
| 7 | other programmatic provider? | 7 | break. |
| 8 | MS. CLEMONS: Objection; form. | 8 | THE VIDEOGRAPHER: The time is 11:03 |
| 9 | THE WITNESS: We use multiple | 9 | a.m. This ends unit 1. We're off the record. |
| 10 | programmatic providers to track the return on | 10 | (Recess taken.) |
| 11 | investment on a particular campaign to be most | 11 | THE VIDEOGRAPHER: The time is 11:20 |
| 12 | efficient to achieve our goals for the American | 12 | a.m. This begins Unit Number 2. We're on the |
| 13 | taxpayer. | 13 | record. |
| 14 | BY MS. GOODMAN: | 14 | BY MS. GOODMAN: |
| 15 | Q. And last one. Have you heard of | 15 | Q. Mr. Koepke, have you -- can you think of |
| 16 | QuantiCast? | 16 | any other places CMS has placed ads that would be |
| 17 | A. Yes. | 17 | in the bucket of ads within a logged-in |
| 18 | Q. Is that a programmatic provider that CMS | 18 | experience? |
| 19 | has used? | 19 | MS. CLEMONS: Objection to form. |
| 20 | MS. CLEMONS: Objection; form. | 20 | THE WITNESS: Not off the top of my |
| 21 | THE WITNESS: I am not sure. | 21 | head. |
| 22 | BY MS. GOODMAN: | 22 | BY MS. GOODMAN: |
| 23 | Q. Okay. Have you heard of MNI? | 23 | Q. And another kind of digital ad we've |
| 24 | A. Yes. | 24 | discussed was OTT ads. Do you recall that? |
| 25 | Q. Is that a programmatic provider CMS has | 25 | A. Yes. |

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| <p style="text-align: right;">Page 74</p> <p>1 Q. What -- what places has CMS placed OTT 2 ads?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Hulu. I'm pulling a blank 5 on a couple of the others. Competitors to Hulu.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you know what mechanism CMS uses 8 to place ads on Hulu or other competitors to 9 Hulu?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We provide direction to 12 our contractors to place ads on OTT to reach 13 audiences of interest for our programs.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And do you provide any direction in what 16 particular way to place OTT ads in order to reach 17 audiences of interest?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We provide direction as to 20 the tactics and the channels that will reach the 21 audiences of our interest.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Do you -- do you direct them to use any 24 particular ad-buying tool in order to place ads 25 on OTT?</p> | <p style="text-align: right;">Page 76</p> <p>1 who did not make it through the privacy analysis 2 and was not approved for use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I am not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. So we've talked about a variety of types 8 of digital ads, YouTube, programmatic mobile, 9 programmatic video, programmatic display, ads 10 with publishers, website takeovers, ads within a 11 logged-in experience, including Google Discovery, 12 Facebook, Instagram, Twitter and LinkedIn, 13 Search, including Google and Bing and 14 over-the-top ads, including Hulu and competitors 15 of Hulu. How does CMS decide which of those 16 digital categories to use when making decisions 17 about advertising?</p> <p>18 MS. CLEMONS: Objection; form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: We consider the audience 21 that we try to reach, the behavior we want them 22 to do, and the size of the budget that we have at 23 our disposal.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Anything else that you consider in</p> |
| <p style="text-align: right;">Page 75</p> <p>1 MS. CLEMONS: Objection to form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: We do.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And what ad-buying tools do you direct 6 the ad agencies to use in order to place ads on 7 OTT?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: I'm not sure.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. So how do you know that you 12 direct them to use particular ad-buying tools?</p> <p>13 A. In our media plans, we approve the 14 entire media plan, which included ad-buying 15 tools.</p> <p>16 Q. And do all of the ad-buying tools used 17 by ad agencies for CMS need to go through the 18 privacy analysis that we talked about earlier?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: To the degree that there 22 is a data exchange with our website. That's the 23 key.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Are you aware of any digital ad provider</p> | <p style="text-align: right;">Page 77</p> <p>1 making a decision on which advertising -- digital 2 advertising category to use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: That might vary by 5 campaign, but off the top of my head I can't say. 6 What I said was the most important.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Does CMS try to create an appropriate 9 mix of advertising across all of the categories 10 that we've discussed?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What would be your 13 definition of appropriate mix?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. For whatever is -- CMS deems to be 16 appropriate for a given campaign. So do you 17 decide to use multiple different channels, and, 18 if so, how do you make those decisions?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 THE WITNESS: We assess the goal of 21 the campaign, the audience that we're trying to 22 reach, how we can best reach them, and the amount 23 of resources we have.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And in the course of those</p> |

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| 1 Q. Okay. How about the -- have you 2 observed any changes in the availability of 3 advertising providers that you could use to reach 4 your audience over the 2019 to 2023 time period? | 1 best of my recollection, that type of display 2 ad has increased in its value to us. 3 BY MS. GOODMAN: 4 Q. And how does CMS go about -- what 5 methods does CMS use to place these kinds of 6 prospecting display ads? |
| 5 MS. CLEMONS: Objection to form. 6 THE WITNESS: I don't recall. 7 BY MS. GOODMAN: 8 Q. So earlier we talked about a lot of the 9 different programmatic providers that CMS has 10 used. 11 A. Mm-hmm. 12 Q. Do you recall that testimony? 13 A. Yes, I do. 14 Q. Okay. With respect to those providers, 15 were they all available to CMS in the 2019 year 16 as compared to the 2023 year? | 7 MS. CLEMONS: Objection to form. 8 THE WITNESS: We direct our contractors 9 to do it on our behalf. 10 BY MS. GOODMAN: 11 Q. And do you direct them to use any 12 particular provider? 13 MS. CLEMONS: Objection to form. 14 Foundation. 15 THE WITNESS: We will direct them to use 16 particular providers. |
| 17 MS. CLEMONS: Objection; form. 18 THE WITNESS: I don't recall. 19 BY MS. GOODMAN: 20 Q. Are you aware of any advertising 21 providers who were not available to CMS in 22 2019 but who are available to CMS in 2023? 23 MS. CLEMONS: Objection to form. 24 THE WITNESS: I am not. 25 BY MS. GOODMAN: | 17 BY MS. GOODMAN: 18 Q. Okay. So with respect to the increasing 19 effectiveness of prospecting display ads, what 20 providers have you used? 21 MS. CLEMONS: Objection to form. 22 THE WITNESS: Off the top of my mind, I 23 can think of two -- 24 BY MS. GOODMAN: 25 Q. Which are those? |
| Page 115 | Page 117 |
| 1 Q. Okay. So one of the subtle changes 2 that you said you observed was that display has 3 become more impactful, correct? And when you say 4 "display," can you be more detailed about what 5 kind of display advertising you mean that has 6 become more impactful as in having a higher 7 return on investment? 8 MS. CLEMONS: Objection to form. 9 THE WITNESS: So kind of display really 10 covers a lot of categories, because there's 11 creative, there's delivery systems, there's 12 targeted. Do you have anything particularly in 13 mind? 14 BY MS. GOODMAN: 15 Q. No. I want to understand what you mean 16 by "display being more impactful." 17 A. All right. 18 MS. CLEMONS: Objection to form. 19 THE WITNESS: So to the best of my 20 recollection, display ads that -- what we would 21 call -- I don't know. Let me see. I've gotta 22 think of the term here -- prospecting. So those 23 are the ads that go out and find people who could 24 benefit from the program, who may or may not have 25 ever interacted with the program before. To the | 1 A. Which does not mean that there aren't 2 others. 3 Q. Sure. 4 A. So Google and MIQ. 5 MS. GOODMAN: Shall we take a break for 6 lunch? 7 MS. CLEMONS: Yeah. 8 THE WITNESS: I'm good with whatever. 9 THE VIDEOGRAPHER: The time is 12:22 10 p.m. This ends Unit 2. We're off the record. 11 (Lunch recess taken.) 12 (Exhibit No. 65, a document Bates 13 Numbered CMS-ADS-11906 through 11974, was 14 introduced.) 15 THE VIDEOGRAPHER: The time is 1:14 p.m. 16 This begins Unit Number 3. We're on the record. 17 BY MS. GOODMAN: 18 Q. Mr. Koepke, I'm going to hand you a 19 document marked Exhibit 65, CMS-ADS-11906 through 20 11974. 21 And this is a technical proposal from 22 Weber Shandwick for Healthcare.gov 2010 Open 23 Enrollment campaign, correct? 24 A. I'm not sure. It's going to take me a 25 minute to look at it. |

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| 1 | Q. Sure. | 1 Marketing Group" incorrectly. It sounded correct |
| 2 | A. It appears as such. | 2 to me. |
| 3 | Q. Okay. And what is the purpose of a | 3 BY MS. GOODMAN: |
| 4 | technical proposal, to your knowledge? | 4 Q. Okay. I don't understand what the |
| 5 | MS. CLEMONS: Objection; form. | 5 detail with respect to the Strategic Marketing |
| 6 | THE WITNESS: A technical proposal is | 6 Group led you to say no to my question. |
| 7 | part of a contracting process. So the offerers, | 7 MS. CLEMONS: Objection to form. |
| 8 | which are the different ad agencies who might be | 8 BY MS. GOODMAN: |
| 9 | interested in contracting with the federal | 9 Q. Can you explain that to me? |
| 10 | government, would write a technical proposal to | 10 A. Your question had three parts: Have I |
| 11 | show their abilities to meet the standards that | 11 ever read a technical proposal. Is it about |
| 12 | the federal government has set forward. | 12 advertising. And is it for the Strategic |
| 13 | BY MS. GOODMAN: | 13 Marketing Group at CMS. I guess that's four |
| 14 | Q. And did multiple different contractors | 14 parts. |
| 15 | compete each year for the Open Enrollment | 15 The Strategic Marketing Group did not |
| 16 | campaign, or was it only Webber Shandwick? | 16 exist when I read the technical proposals. |
| 17 | MS. CLEMONS: Objection to form. | 17 Q. When did you read the technical |
| 18 | THE WITNESS: Each year? | 18 proposals? |
| 19 | BY MS. GOODMAN: | 19 MS. CLEMONS: Objection to form. |
| 20 | Q. Each year. | 20 THE WITNESS: The early 2000s. |
| 21 | A. Okay. It was not always only Weber | 21 BY MS. GOODMAN: |
| 22 | Shandwick, to the best of my knowledge. I'm | 22 Q. So since the early 2000s, is it accurate |
| 23 | actually not a hundred percent sure, but -- so I | 23 that you have not read the strat -- the technical |
| 24 | don't know. | 24 proposals submitted by ad agencies? |
| 25 | Q. Okay. As the director of the Strategic | 25 MS. CLEMONS: Objection to form. |
| | Page 119 | Page 121 |
| 1 | man -- Marketing Group, did you review technical | 1 THE WITNESS: The technical proposals |
| 2 | proposals? | 2 are written by -- are read and judged by trained |
| 3 | A. No, I did not. | 3 staff who work for me. |
| 4 | MS. CLEMONS: Objection to form. | 4 BY MS. GOODMAN: |
| 5 | THE WITNESS: I'm so sorry. | 5 Q. Okay. And so your trained staff read |
| 6 | BY MS. GOODMAN: | 6 and review them, but you do not; is that correct? |
| 7 | Q. Have you ever had occasion to read | 7 A. That is correct. |
| 8 | them? | 8 Q. Okay. Do you discuss the technical |
| 9 | MS. CLEMONS: Objection to form. | 9 proposals with your staff? |
| 10 | THE WITNESS: Have I ever had the | 10 A. I do not. |
| 11 | occasion to read a technical proposal of any | 11 Q. Why not? |
| 12 | sort? | 12 A. Because it is inappropriate for people |
| 13 | BY MS. GOODMAN: | 13 judging a technical proposal to talk with other |
| 14 | Q. Of -- related to any advertising | 14 people about it in the process of an acquisition. |
| 15 | campaign handled by the Strategic Marketing Group | 15 Q. Why is that improper or inappropriate? |
| 16 | at CMS. | 16 A. I would only be doing conjecture, but |
| 17 | A. You had a lot of very specific details | 17 it's -- the government has a goal to be fair to |
| 18 | in that question that would lead me to say no. | 18 all businesses. And so, therefore, the people |
| 19 | Q. What are the specific details in my | 19 who read the proposals and judge them are doing |
| 20 | question that would lead you to say no? | 20 so in a non-biased sense. And discussing with |
| 21 | A. One of them was the "Strategic Marketing | 21 anyone else could -- could increase or add bias |
| 22 | Group." | 22 to a process. |
| 23 | Q. Did I state that incorrectly? | 23 Q. And which of your staff reviewed |
| 24 | MS. CLEMONS: Objection to form. | 24 technical proposals for the Healthcare.gov Open |
| 25 | THE WITNESS: You did not say "Strategic | 25 Enrollment campaigns in the '19 to '23 time |

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| 1 | Q. So you can't answer -- you are unable | 1 networks and talk about the price of what's |
| 2 | to answer that question without relying on | 2 available. |
| 3 | privileged communications; is that correct? | 3 BY MS. GOODMAN: |
| 4 | A. That is correct. | 4 Q. And do you participate in discussions |
| 5 | Q. So you've never raised those concerns | 5 between advertising agencies and any vendors over |
| 6 | with anybody at your advertising agencies, for | 6 price for ad buys on behalf of CMS? |
| 7 | example. Is that accurate? | 7 MS. CLEMONS: Objection to form. |
| 8 | A. As part of the informal conversations | 8 THE WITNESS: We participate in |
| 9 | with colleagues, I can't recall. | 9 conversations with the ad agencies over price and |
| 10 | Q. Okay. You referenced DoubleClick. What | 10 what they've done to negotiate, and we provide |
| 11 | is DoubleClick? | 11 direction when we think there's other |
| 12 | A. DoubleClick is a tool that allows us to | 12 negotiations that should be done. |
| 13 | track ad performance and our websites together. | 13 BY MS. GOODMAN: |
| 14 | Q. So it's a -- -- it's an -- a data | 14 Q. Okay. But you -- but does any |
| 15 | monitoring tool. Is that accurate? | 15 individual from CMS actually participate in the |
| 16 | A. From my understanding, that's partially | 16 negotiations over price? |
| 17 | accurate. It's also a data-creating tool. | 17 MS. CLEMONS: Objection to form. |
| 18 | Q. And Google Analytics, has CMS decided | 18 Foundation. |
| 19 | not to use Google Analytics anymore -- | 19 THE WITNESS: To the extent that we |
| 20 | MS. CLEMONS: Objection; form. | 20 direct our ad agencies on negotiating a price, we |
| 21 | BY MS. GOODMAN: | 21 do participate. |
| 22 | Q. -- within the Strategic Marketing Group, | 22 BY MS. GOODMAN: |
| 23 | at least? | 23 Q. Okay. Beyond -- aside from the |
| 24 | A. The Strategic Marketing Group did not | 24 extent to which you direct your ad agencies on |
| 25 | decide not to use Google Analytics. | 25 negotiations a price, is there any other way in |
| | Page 227 | Page 229 |
| 1 | Q. Did somebody else decide not to use | 1 which you participate in such negotiations? And |
| 2 | Google Analytics? | 2 when I say "you," I mean CMS individuals. |
| 3 | MS. CLEMONS: Objection; form. | 3 MS. CLEMONS: Objection to form. |
| 4 | Foundation. | 4 Foundation. |
| 5 | THE WITNESS: By "somebody else," | 5 THE WITNESS: Our participation is |
| 6 | would -- could you give me a little more on that? | 6 through the direction of those who work for us. |
| 7 | BY MS. GOODMAN: | 7 BY MS. GOODMAN: |
| 8 | Q. Is the Strategic Marketing Group -- has | 8 Q. Okay. The advertising purchases which |
| 9 | the Strategic Marketing Group transitioned from | 9 your ad agency makes on behalf of CMS are part of |
| 10 | using Google Analytics to an Adobe product? | 10 a bundle of services that the ad agency provides, |
| 11 | A. The Strategic Marketing Group is in the | 11 correct? |
| 12 | process of that right now. | 12 MS. CLEMONS: Objection; form. |
| 13 | Q. Okay. Why are you in that process now? | 13 Foundation. |
| 14 | A. The people who manage the websites, | 14 THE WITNESS: I'm not sure what you mean |
| 15 | which is different from the Strategic Marketing | 15 by "bundle." |
| 16 | Group, made a decision to go from Google | 16 BY MS. GOODMAN: |
| 17 | Analytics to the Adobe product. | 17 Q. A group of services that the ad agency |
| 18 | Q. Okay. So under the agency -- the | 18 provides includes buying ads, as well as other |
| 19 | CMS's contracts with advertising agencies, is it | 19 services, correct? |
| 20 | accurate that the advertising agency negotiates | 20 MS. CLEMONS: Objection to form. |
| 21 | the prices to be paid for advertising? | 21 Foundation. |
| 22 | MS. CLEMONS: Objection to form. | 22 THE WITNESS: I would say that we |
| 23 | Foundation. | 23 contract with the ad agencies to help us |
| 24 | THE WITNESS: In an ad agency, there | 24 implement our ad campaigns. |
| 25 | are buyers who get on the phones, like, with TV | 25 BY MS. GOODMAN: |

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| 1 | Q. And that includes both buying ads as | 1 Direct and control are very similar. |
| 2 | well as other services, correct? | 2 Q. Okay. When the -- when a advertising |
| 3 | MS. CLEMONS: Objection to form. | 3 budget is set for a particular channel of |
| 4 | Foundation. | 4 advertising, does the ad agency have discretion |
| 5 | THE WITNESS: There are other activities | 5 on how to spend that budget within the channel? |
| 6 | involved. | 6 MS. CLEMONS: Objection to form. |
| 7 | BY MS. GOODMAN: | 7 THE WITNESS: No. |
| 8 | Q. And -- okay. | 8 BY MS. GOODMAN: |
| 9 | The ad agencies with whom CMS works, are | 9 Q. No? Why not? |
| 10 | they independent of CMS? | 10 A. Because we do. |
| 11 | MS. CLEMONS: Objection; form. | 11 Q. What do you mean by that? |
| 12 | THE WITNESS: What is your definition of | 12 A. Well, as we've discussed earlier today, |
| 13 | "independent of CMS"? | 13 even optimizations go through ATBs. Those ATBs |
| 14 | BY MS. GOODMAN: | 14 are a form of the direction that we give the |
| 15 | Q. They're a separate entity. | 15 advertiser on how to spend the budget. |
| 16 | MS. CLEMONS: Objection to form. Calls | 16 Q. Okay. So if an ATB authorizes \$10,000 |
| 17 | for a legal conclusion. | 17 in purchases for social media, does the ad agency |
| 18 | THE WITNESS: They are contracted | 18 have discretion on how to spend that \$10,000 |
| 19 | entity. | 19 within the social media category? |
| 20 | BY MS. GOODMAN: | 20 MS. CLEMONS: Objection to form. |
| 21 | Q. Okay. Separate from CMS, correct? | 21 THE WITNESS: No. There are -- no. |
| 22 | MS. CLEMONS: Objection to form. | 22 BY MS. GOODMAN: |
| 23 | THE WITNESS: Bound by a contract. | 23 Q. And why not? |
| 24 | BY MS. GOODMAN: | 24 A. Because in the end, CMS is responsible |
| 25 | Q. And does CMS control the ad agency's | 25 for how we're spending taxpayer dollars and |
| | Page 231 | Page 233 |
| 1 | activities? | 1 responsible for the impact of our campaigns. |
| 2 | MS. CLEMONS: Objection to form. Calls | 2 Q. And so is it accurate that CMS directs |
| 3 | for a legal conclusion. Foundation. | 3 the ad agency to spend \$10 on Facebook, \$10 on |
| 4 | THE WITNESS: All their activities? | 4 Instagram, \$10 on LinkedIn, or is that specific |
| 5 | BY MS. GOODMAN: | 5 allocation within the discretion of the |
| 6 | Q. Does CMS control the ad agency's | 6 advertising agency, so long as it is within |
| 7 | activities relative to the advertising services | 7 the authorization to buy? |
| 8 | that the ad agency provides to CMS? | 8 MS. CLEMONS: Objection to form. |
| 9 | MS. CLEMONS: Objection to form. Calls | 9 THE WITNESS: If there was any |
| 10 | for a legal conclusion. Foundation. | 10 discretion, that would be discretion given by |
| 11 | THE WITNESS: Control is not a term I've | 11 CMS. |
| 12 | used before. Direct. But I can see how they are | 12 BY MS. GOODMAN: |
| 13 | related, so we direct those activities. | 13 Q. Okay. |
| 14 | BY MS. GOODMAN: | 14 A. But I am not aware of any such |
| 15 | Q. But you would not say that CMS controls | 15 discretion. |
| 16 | their activities. Is that accurate? | 16 Q. Can you go back to Exhibit 69? |
| 17 | MS. CLEMONS: Objection; form. Calls | 17 And if you turn to Page 810, this is an |
| 18 | for a legal conclusion. Foundation. | 18 authorization to buy, correct? |
| 19 | THE WITNESS: Well, I would say that we | 19 A. It's gonna take me a minute to ascertain |
| 20 | control their activities. | 20 that. |
| 21 | BY MS. GOODMAN: | 21 (Reviews document.) |
| 22 | Q. Why is that? | 22 Yes. Correct. |
| 23 | A. Well, in part, I never thought about it | 23 Q. Okay. And you see that this particular |
| 24 | like that until you just -- you just started | 24 example states, just under the chart, that |
| 25 | using the word. | 25 "Centers for Medicare and Medicaid services |

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| | Page 234 | Page 236 |
|----|---|--|
| 1 | client signature authorizes Weber Shandwick | 1 supposed to be spent as in -- as directed in the |
| 2 | Agency to purchase media totaling 8. -- | 2 flowcharts of what we looked at before for these |
| 3 | \$8,219,893, plus or minus 5 percent, correct? | 3 campaigns. |
| 4 | A. Correct. | 4 BY MS. GOODMAN: |
| 5 | Q. So that "plus or minus 5 percent," is | 5 Q. Okay. And each and every time a |
| 6 | that committed to the discretion of the ad agency | 6 purchase is, in fact, made according to the |
| 7 | for the -- for buying purposes? | 7 flowcharts, are you made aware of that, or of the |
| 8 | MS. CLEMONS: Objection to form. | 8 price that is paid at that particular time? |
| 9 | THE WITNESS: No. | 9 A. We -- |
| 10 | BY MS. GOODMAN: | 10 MS. CLEMONS: Objection to form. |
| 11 | Q. Why not? | 11 THE WITNESS: We monitor on a very close |
| 12 | A. There are many factors that go into the | 12 basis how that money is spent over time and in |
| 13 | availability of -- of media at any given time, | 13 what channels. |
| 14 | the availability of a purchase. And some of | 14 BY MS. GOODMAN: |
| 15 | these tactics, channels, such as search, | 15 Q. Okay. Does the ad agency obtain |
| 16 | the amount of spend there is what we call | 16 anybody's approval at CMS prior to making any |
| 17 | demand-driven, which isn't just that you've made | 17 particular advertising buy so long as it is |
| 18 | a decision "I'm going to spend a hundred thousand | 18 within the authorization to buy? |
| 19 | dollars on search," but it depends on how many | 19 MS. CLEMONS: Objection to form. |
| 20 | people actually search the terms that you're | 20 THE WITNESS: The authorization to buy |
| 21 | bidding on to put those ads. Therefore, there is | 21 provides the government a lot of control and |
| 22 | a natural fluctuation in ad availability and ad | 22 provides a lot of direction to how the ad agency |
| 23 | cost that neither CMS nor Weber Shandwick can be | 23 then carries out the minutia of the budget. |
| 24 | a hundred percent held accountable. So we give | 24 BY MS. GOODMAN: |
| 25 | ourselves a 5 percent plus or minus within these | 25 Q. Okay. And so is anybody at CMS aware |
| | Page 235 | Page 237 |
| 1 | numbers based on that. | 1 -- made aware of each and every time that the ad |
| 2 | Q. Okay. And the sentence here that says, | 2 agency is carrying out the minutia of the budget? |
| 3 | "With client's consent, shifts in allocation of | 3 MS. CLEMONS: Objection to form. |
| 4 | the spend across channels may be made without the | 4 THE WITNESS: Not to my knowledge. |
| 5 | need for a new ATB so long as the total spend | 5 BY MS. GOODMAN: |
| 6 | does not exceed the amount authorized in this | 6 Q. Okay. And is carrying out the minutia |
| 7 | document," what does that mean? | 7 of the budget committed to the discretion of the |
| 8 | A. That means that we can direct the | 8 ad agency? |
| 9 | media buy and not have an ATB every single time | 9 MS. CLEMONS: Objection to form. |
| 10 | -- optimizations of not having an ATB every | 10 THE WITNESS: What is your definition of |
| 11 | single time. | 11 "minutia of the budget"? |
| 12 | Q. And when your advertising agency is | 12 BY MS. GOODMAN: |
| 13 | making ad purchases for CMS, are you aware of | 13 Q. I'm using it as you used the term, so |
| 14 | each and every time they are making a purchase on | 14 you tell me how you're using it. |
| 15 | Google or through the Trade Desk or through AARP | 15 A. So the exact hour that somebody gets |
| 16 | and the exact price that is negotiated for such | 16 on the phone call and -- and told -- talks to |
| 17 | purchases are agreed? | 17 somebody about the placement of an ad, actually, |
| 18 | MS. CLEMONS: Objection to form. | 18 we've actually reviewed all of those too, on some |
| 19 | THE WITNESS: Well, as -- my | 19 campaigns, the exact placement of every single |
| 20 | understanding is in the time period of this, | 20 ad. That is what I would call the minutia. |
| 21 | there's 44 campaigns, something like that, me | 21 What I would call the important control |
| 22 | personally, not necessarily everything, but my | 22 and the important direction is the, "these are |
| 23 | staff is. | 23 the channels we're going to use; this is the |
| 24 | We are aware of the allocation of | 24 audience we're gonna reach; this is the delivery |
| 25 | the budget and the timelines for when they are | 25 we expect for that," and on a weekly basis how |

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| | |
|--|---|
| 1 deposition is over and that Google does not have 2 grounds to hold the deposition open. 3 MS. GOODMAN: Okay. Thank you for your 4 time, Mr. Koepke. 5 THE WITNESS: It was my pleasure. This 6 was fun. 7 THE VIDEOGRAPHER: Time is 6:23 p.m. 8 We're off the record. 9 (Deposition concluded -- 6:23 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 | Page 290 1 Katherine Clemons Esq 2 Katherine.clemons@usdoj.gov 3 August 22nd, 2023 4 RE: United States, Et Al v. Google, LLC 5 8/21/2023, Christopher Koepke (#6043164) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 (erratas-cs@veritext.com). 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25 |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 | Page 291 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 |

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Page 294

1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6043164)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11 _____

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20___.
16

17

18 _____

19 NOTARY PUBLIC

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21

22

23

24

25

Page 117

1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6075382)

3 E R R A T A S H E E T

4 PAGE 11 LINE 4 CHANGE _____

5 "neck" should read "NEC" _____

6 REASON _____

7 PAGE 66 LINE 16 CHANGE _____

8 "organization" should read "authorization" _____

9 REASON _____

10 PAGE 89 LINE 21 CHANGE _____

11 "Aaron Blazer" should read "Erin Blazar" _____

12 REASON _____

13 PAGE 90 LINE 2 CHANGE _____

14 "Aaron Blazer" should read "Erin Blazar" _____

15 REASON _____

16 PAGE 90 LINE 6 CHANGE _____

17 "Aaron" should read "Erin" _____

18 REASON _____

19 PAGE 91 LINE 14 CHANGE _____

20 "Aaron Blazer" should read "Erin Blazar" _____

21 REASON _____

22 Page: 102 Line: 6 Change: "DO" should read "DOJ"

23 Christopher P. Koepke -S Digitally signed by Christopher P.
Koepke -S
Date: 2023.09.29 11:18:12 -04'00'

23 9/29/23

24 Christopher Koepke Date

Page 118

1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6075382)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10 **Christopher P. Koepke -S** Digitally signed by Christopher
P. Koepke -S
Date: 2023.09.29 11:56:51
-04'00'

9/29/23

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20 ____.

19 NOTARY PUBLIC

20

21

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23

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25